

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JOSEPH A. BUFFEY,

Petitioner,

vs.

**Civil Action No. 2:05 CV 70
(Maxwell)**

THOMAS L. McBRIDE, Warden,

Respondent.

ORDER

It will be remembered that the above-styled civil action was instituted on September 19, 2005, when *pro se* Petitioner Joseph A. Buffey, an inmate at Mt. Olive Correctional Complex in Mt. Olive, West Virginia, filed a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody.

It will further be remembered that the above-styled civil action was referred to United States Magistrate Judge John S. Kaull for initial review and report and recommendation, pursuant to Rule 83.13 of the Local Rules of Prisoner Litigation Procedure.

On September 30, 2005, United States Magistrate Judge John S. Kaull filed a Report And Recommendation That Application To Proceed *In Forma Pauperis* Be Denied. It should also be noted that the docket in the above-styled civil action reveals that the \$5.00 filing fee was paid on October 20, 2005. Accordingly, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge John S. Kaull on September 30, 2005 (Docket No. 6), be, and the same hereby is, **ACCEPTED** in whole. Accordingly, it is

ORDERED that the Petitioner's Application For Leave To Proceed *In Forma Pauperis* (Docket No. 2) be, and the same is hereby, **DENIED**.

On January 24, 2007, United States Magistrate Judge John S. Kaull filed a second Opinion/Report And Recommendation in the above-styled civil action, wherein he recommended that the Petitioner's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody be denied on the merits and dismissed with prejudice.

Magistrate Judge Kaull's Opinion/Report And Recommendation expressly advised the parties, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections to said Opinion/Report And Recommendation within ten days after being served with a copy of the same.

The record herein reflects that on January 30, 2007, the Petitioner filed Objections to Magistrate's Report and Recommendation in 28 U.S.C. § 2254 Action.

Upon examination of Magistrate Judge Kaull's Opinion/Report And Recommendation, it appears to the Court that the issues raised by the Petitioner in his Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody were thoroughly considered by Magistrate Judge Kaull in his Opinion/Report And Recommendation. Furthermore, upon consideration of the Petitioner's objections to said Opinion/Report And Recommendation, it appears to the Court that the Petitioner has not raised any issues that were not thoroughly considered by Magistrate Judge Kaull in said Opinion/Report And Recommendation. Moreover, the Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that Magistrate Judge Kaull's Report And Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled civil

action. Therefore, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge John S. Kaull on January 24, 2007 (Docket No. 15), be, and the same hereby is, **ACCEPTED** in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Petitioner's Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (Docket No. 1), be, and the same is hereby, **DENIED** on the merits and **DISMISSED, with prejudice.**

It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

ORDERED that, should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$250.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

ENTER: March 29, 2007



United States District Judge